

Original Title Page

PORT OF LOS ANGELES
DATA DELIVERY AGREEMENT
FMC Agreement No. 201361
Expiration Date: See Section 4

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This **PORT OF LOS ANGELES DATA DELIVERY AGREEMENT** (the “Agreement”), is entered into between and among the City of Los Angeles, a municipal corporation, acting by and through the Executive Director of its Harbor Department (the “Port”), PierPass LLC, a California limited liability company (“PierPass”), and each of the tenants of the Port (the “Tenants”) listed in Exhibit A hereto.

WHEREAS, the Tenants are tenants of the Port who operate marine terminals on Port property (the “Terminals”); and

WHEREAS, the Port, as part of its Clean Air Action Plan, has adopted a Clean Truck Program, which limits access to the Terminals to trucks that comply with the Tariff’s access requirements; and

WHEREAS, the Port has amended the Tariff to require that Tenants provide truck data from the Tenants’ Terminal gate transactions in order to verify compliance with the Tariff; and

WHEREAS, the Tenants have designated PierPass as their agent to deliver such data to the Port on their behalf for a limited period until the Tenants commence providing the data directly to the Port, and PierPass is uniquely capable of delivery of such data due to the existing Port cargo tracking systems that it operates on behalf of the Tenants; and

WHEREAS, the Port maintains the Drayage Truck Registry (“DTR”), which contains information on whether a truck meets the Port’s criteria under the Clean Truck Program; and

WHEREAS, the Tenants rely upon the information in the DTR to determine whether trucks should be granted access to the Terminals.

NOW THEREFORE, the parties, intending to be legally bound, hereby agree as follows:

SECTION 1. DELIVERY OF TENANTS' DATA.

1.1 Data. Tenants agree that PierPass shall act as their agent to, and PierPass agrees that it shall, deliver the following data (the "Data") to the Port with respect to trucks moving through each of the Tenants' Terminals: Port terminal ID, SCAC Code, RFID number, License Plate Number, move date/time, in/out date/time, and full/empty. The Data will be provided periodically to the Port in electronic form, in batch format, at such intervals as the parties may agree. The specific data to be provided, as well as the timing and format, may be modified by the parties from time to time as they may so agree in writing.

1.2 Subcontractors. PierPass may, at its discretion, fulfill its obligations under this Agreement directly, through the use of one or more subcontractor(s), or through a combination thereof.

1.3 Data Delivery and License. PierPass shall deliver such Data as exists in the relevant Tenants' database, and does not warrant to the Port as to the accuracy of any individual Data. The Port acknowledges and agrees that any and all work product, including all Data provided hereunder, and including proprietary or customized software of PierPass or the Tenants, or any of their contractors, and all component parts and codes thereof, is and shall remain exclusively the property of PierPass or the Tenants, as the case may be. PierPass and Tenants grant the Port, as to their respective property, a fully paid up, non-exclusive, worldwide, irrevocable royalty-free license to use, reproduce, prepare derivative works, distribute copies and

display the Data solely to the extent necessary for conducting the business of the Port. Such license extends to third party consultants that may be engaged by the Port to assist it in conducting the business of the Port, for example, for the preparation of reports of the Clean Truck Program or emissions inventories under the Clean Air Action Plan.

SECTION 2. COMPENSATION TO PIERPASS

In exchange for the services provided by PierPass under this Agreement, the Port shall compensate PierPass \$4,000 per calendar month payable within thirty (30) days upon receipt of the invoice or forty-five (45) days after the close of each month for which monthly Data has been delivered. The maximum amount payable under this Agreement is Forty-Eight Thousand Dollars (\$48,000).

SECTION 3. DRAYAGE TRUCK REGISTRY

3.1 Access to Terminals. To the extent that the Port's Tariff contains criteria that trucks and their owners or operators must meet in order to gain access to the Terminals and/or a deadline by which such criteria must be met, the Tenants shall permit access only to trucks that meet the criteria and/or deadlines established by the Port, provided that the relevant information as to whether a truck meets the criteria is provided to the Tenants through the DTR.

3.2 Maintenance of and Access to Database. The Port, at its expense, shall be responsible for the maintenance of a complete, accurate, and up-to-date DTR that identifies the status of all trucks regularly serving the Port with respect to the environmental and concession requirements for trucks established by the Port. The

Port shall make commercially reasonable efforts to ensure that the DTR is available in the manner and at the times set forth in Exhibit C, Drayage Truck Registry Service Levels, attached hereto and incorporated by this reference. The Port, at its expense, shall provide Tenants and their contractors with access to such database to the extent necessary to fulfill their obligations under this Agreement, but the Port shall not be responsible for costs related to such access. Tenants shall not be liable for the consequences of any errors or omissions in the content or transmission of the data in the DTR database maintained by the Port. Upon accurate transmission of the DTR data to the Tenants, the Tenants shall be responsible for maintaining accurate copies of the data transmitted and stored on their systems.

SECTION 4. EFFECTIVE DATE, DURATION AND TERMINATION

4.1 Effective Date. This Agreement shall become effective on the date it enters into effect pursuant to the Shipping Act of 1984, and shall remain in effect for a term of one (1) year.

4.2 Termination. Either party may terminate this Agreement by giving not less than thirty (30) days advance written notice of termination to the other party; provided, however, that such termination shall not affect financial or other obligations previously incurred by the party under this Agreement.

SECTION 5. RELATIONSHIP BETWEEN PARTIES

PierPass acts as an independent contractor. Nothing herein is intended to create or shall be interpreted as creating any other relationship between the Port and PierPass. No party to this Agreement has authority to bind any other party with respect to any matters whatsoever.

SECTION 6. GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to any conflict of law principles, and shall be subject to Federal law to the extent applicable. The venue of any dispute between the parties to this Agreement shall be the State or Federal courts located in County of Los Angeles, State of California in the judicial district required by local court rules, or federal agency having jurisdiction over any dispute arising under applicable Federal law.

SECTION 7. MISCELLANEOUS

7.1 Amendment. This Agreement may not be amended or modified, nor may any provision hereof be waived, except pursuant to an instrument in writing signed by each of the parties hereto.

7.2 Entire Agreement. This Agreement, together with the documents contemplated hereby, sets forth the entire understanding between the parties relating to the subject matter hereof.

7.3 No Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver and delivered to the other party.

7.4 Force Majeure. Except as otherwise provided in this Agreement, no party hereto shall be liable for failure or delay in carrying out its obligations under this Agreement when such failure or delay results from any cause which is beyond the reasonable control of the party including, but not limited to, work stoppages, strikes,

accidents, casualties, labor disputes, fire, road, marine or rail disasters, acts of God, governmental restraints, war or hostilities, acts of terrorism, embargoes or other similar conditions beyond the control of the affected party.

7.5 Notice. Any notice required or permitted to be given under this Agreement shall be in writing and shall be sent by a recognized reputable private courier company or by United States or other national mail system, return receipt requested, or by e-mail or facsimile transmission followed by such means, to:

If to the Port:

City of Los Angeles Harbor Department
P.O. Box 151
San Pedro, California 90733-0151
Attention: Executive Director
Fax: (310) 831-6936

with a copy to:

City of Los Angeles
Office of the City Attorney
425 South Palos Verdes Street
San Pedro, California 90731
Attention: General Counsel
Fax: (310) 831-9778

If to PierPass:

c/o Mr. John Cushing, President & CEO
444 W. Ocean Blvd., Suite 700
Long Beach, CA 90802
Fax: (562) 437-9960

with a copy to:

Wayne R. Rohde
Cozen O'Connor
1200 19th Street, NW
Washington, D.C. 20036
Fax: (202) 618-4847

7.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

7.7 City Required Provisions. The City of Los Angeles requires the provisions set forth on Exhibit B, attached hereto and incorporated by this reference.

7.8 Insurance. PierPass shall comply with the insurance provisions set forth on Exhibit B, attached hereto and incorporated by this reference.

(Signature page follows here)

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on
the date to the left of their signatures.

**THE CITY OF LOS ANGELES
HARBOR DEPARTMENT, acting
by and through the Executive
Director of its Harbor Department**

Dated: 4/2/2021

By: 

Gene Seroka
Executive Director

APPROVED AS TO FORM AND LEGALITY

May 27, 2021

MICHAEL N. FEUER, City Attorney
Janna B. Sidley, General Counsel

By: 

Joy M. Crose, Asst. General Counsel

Account #	_____	W.O. #	_____
Ctr/Div #	_____	Job Fac. #	_____
Proj/Prog #	_____		
Budget FY:		Amount:	
_____		_____	
_____		_____	
TOTAL		_____	
For Acct/Budget Div. Use Only:			
Verified by:		_____	
Verified Funds Available:		_____	
Date Approved:		_____	

PIERPASS LLC

Dated: 19 MAY 2021

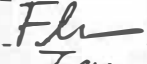
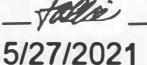
By: 

John Cushing
President & CEO

Port of Los Angeles Data
Delivery Agreement

FUNDS AVAILABLE STAMP
05/25/2021

EXECUTIVE AGREEMENT BETWEEN THE
CITY OF LOS ANGELES AND
PIERPASS, LLC.

Account#	59967	W.O. #	78090
Ctr/Div#	0330	Job Fac. #	637-00
Proj/Prog#	000		
Budget FY:		Amount:	
FY 21/22		\$48,000	
TOTAL		\$48,000	
<u>For Acct/Budget Div. Use Only</u>			
Verified by:			Flora Khaw 2021.05.27 09:34:18 -0700
Verified Funds Available:			Digitally signed by Frank Liu Date: 2021.05.27 11:32:48 -0700
Date Approved:	5/27/2021		

Port of Los Angeles Data
Delivery Agreement
FMC Agreement No.

SIGNATURE PAGE (Continued)

APM TERMINALS PACIFIC LTD.

Dated: 5/10/21

By: [Signature]
Name: JOHN DEBS
Title: Senior Director, US West Coast

FENIX MARINE SERVICES, LTD.

Dated: _____

By: _____
Name: _____
Title: _____

EVERPORT TERMINAL SERVICES, INC.

Dated: _____

By: _____
Name: _____
Title: _____

TRAPAC LLC

Dated: _____

By: _____
Name: _____
Title: _____

WEST BASIN CONTAINER TERMINAL LLC

Dated: _____

By: _____
Name: _____
Title: _____

YUSEN TERMINALS LLC

Dated: _____

By: _____
Name: _____
Title: _____

Port of Los Angeles Data
Delivery Agreement
FMC Agreement No.

SIGNATURE PAGE (Continued)


APM TERMINALS PACIFIC LTD.

Dated: _____

By: _____
Name: _____
Title: _____

FENIX MARINE SERVICES, LTD.

Dated: 5/11/2021

By: 
Name: George Mungul
Title: General Manager

EVERPORT TERMINAL SERVICES, INC.

Dated: _____

By: _____
Name: _____
Title: _____

TRAPAC LLC

Dated: _____

By: _____
Name: _____
Title: _____

WEST BASIN CONTAINER TERMINAL LLC

Dated: _____

By: _____
Name: _____
Title: _____

YUSEN TERMINALS LLC

Dated: _____

By: _____
Name: _____
Title: _____

LEGAL\52209833\1

Port of Los Angeles Data
Delivery Agreement
FMC Agreement No.

SIGNATURE PAGE (Continued)

APM TERMINALS PACIFIC LTD.

Dated: _____

By: _____
Name: _____
Title: _____

FENIX MARINE SERVICES, LTD.

Dated: _____

By: _____
Name: _____
Title: _____

EVERPORT TERMINAL SERVICES, INC.

Dated: _____

By: _____
Name: *GEORGE LANG.*
Title: *PRESIDENT*

TRAPAC LLC

Dated: _____

By: _____
Name: _____
Title: _____

WEST BASIN CONTAINER TERMINAL LLC

Dated: _____

By: _____
Name: _____
Title: _____

YUSEN TERMINALS LLC

Dated: _____

By: _____
Name: _____
Title: _____

Port of Los Angeles Data
Delivery Agreement
FMC Agreement No.

SIGNATURE PAGE (Continued)

APM TERMINALS PACIFIC LTD.

Dated: _____

By: _____
Name: _____
Title: _____

FENIX MARINE SERVICES, LTD.

Dated: _____

By: _____
Name: _____
Title: _____

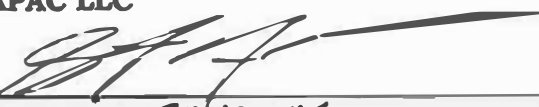
EVERPORT TERMINAL SERVICES, INC.

Dated: _____

By: _____
Name: _____
Title: _____

TRAPAC LLC

Dated: _____

By: 
Name: Steve Frelevius
Title: VP Corporate Labor Relations

WEST BASIN CONTAINER TERMINAL LLC

Dated: _____

By: _____
Name: _____
Title: _____

YUSEN TERMINALS LLC

Dated: _____

By: _____
Name: _____
Title: _____

Port of Los Angeles Data
Delivery Agreement
FMC Agreement No.

SIGNATURE PAGE (Continued)

APM TERMINALS PACIFIC LTD.

Dated: _____

By: _____
Name: _____
Title: _____

FENIX MARINE SERVICES, LTD.

Dated: _____

By: _____
Name: _____
Title: _____

EVERPORT TERMINAL SERVICES, INC.

Dated: _____

By: _____
Name: _____
Title: _____

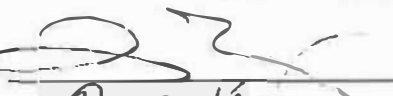
TRAPAC LLC

Dated: _____

By: _____
Name: _____
Title: _____

WEST BASIN CONTAINER TERMINAL LLC

Dated: 5/10/2021

By: 
Name: Quinston L. Smith
Title: General Manager

YUSEN TERMINALS LLC

Dated: _____

By: _____
Name: _____
Title: _____

Port of Los Angeles Data
Delivery Agreement
FMC Agreement No.

SIGNATURE PAGE (Continued)

APM TERMINALS PACIFIC LTD.

Dated: _____

By: _____
Name:
Title:

FENIX MARINE SERVICES, LTD.

Dated: _____

By: _____
Name:
Title:

EVERPORT TERMINAL SERVICES, INC.

Dated: _____

By: _____
Name:
Title:

TRAPAC LLC

Dated: _____

By: _____
Name:
Title:

WEST BASIN CONTAINER TERMINAL LLC

Dated: _____

By: _____
Name:
Title:

YUSEN TERMINALS LLC

Dated: 5/13/21

By: Sean Maroon
Name: SEAN MAROON
Title: DIRECTOR OF L.R.